



HOUSE BILL No. 4886

May 24, 1995, Introduced by Rep. Ciaramitaro and referred to the Committee on Judiciary and Civil Rights.

A bill to amend sections 2, 3, 4, 5, and 10 of Act No. 46 of the Public Acts of 1991, entitled "Eligible domestic relations order act," being sections 38.1702, 38.1703, 38.1704, 38.1705, and 38.1710 of the Michigan Compiled Laws; and to add sections 5a and 10a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2, 3, 4, 5, and 10 of Act No. 46 of the
2 Public Acts of 1991, being sections 38.1702, 38.1703, 38.1704,
3 38.1705, and 38.1710 of the Michigan Compiled Laws, are amended
4 and sections 5a and 10a are added to read as follows:

5 Sec. 2. As used in this act:

6 (a) "Alternate payee" means a spouse of a participant under
7 a judgment of separate maintenance, or a former spouse, child, or

1 dependent of a participant, who is named in an eligible domestic
2 relations order.

3 (b) "Benefit" means an annuity, a pension, a retirement
4 allowance, or an optional benefit accrued or accruing to a par-
5 ticipant under a retirement system or a postretirement subsidy
6 payable to a participant under a retirement system.

7 (C) "DEFINED CONTRIBUTION PLAN" MEANS A RETIREMENT SYSTEM
8 THAT PROVIDES FOR AN INDIVIDUAL ACCOUNT FOR EACH MEMBER OF THE
9 RETIREMENT SYSTEM AND THAT PROVIDES FOR BENEFITS BASED SOLELY
10 UPON THE AMOUNT CONTAINED WITHIN THE INDIVIDUAL ACCOUNT AT THE
11 TIME OF COMMENCEMENT OF BENEFITS.

12 (D) ~~(c)~~ "Domestic relations order" means a judgment,
13 decree, or order of a court made pursuant to the domestic rela-
14 tions law of this state and relating to the provision of alimony
15 payments, child support, or marital property rights to a spouse
16 of a participant under a judgment of separate maintenance, or to
17 a former spouse, child, or dependent of a participant.

18 (E) ~~(d)~~ "Earliest retirement date" means the earliest date
19 on which a participant meets all of the requirements for retire-
20 ment under a retirement system except for termination of
21 employment.

22 (F) ~~(e)~~ "Eligible domestic relations order" or "EDRO"
23 means a domestic relations order that is considered an eligible
24 domestic relations order under section 11 or that meets all of
25 the following requirements:

26 (i) The domestic relations order states the name, last known
27 address, and social security number of the participant.

1 (ii) The domestic relations order states the name, last
2 known address, and social security number of the alternate payee
3 OR THE NAME OF THE FORMER SPOUSE OF THE PARTICIPANT IF THERE IS
4 NO ALTERNATE PAYEE NAMED IN THE DOMESTIC RELATIONS ORDER.

5 (iii) The domestic relations order states the amount or per-
6 centage of the benefit to be paid to an alternate payee, or the
7 manner under which the retirement system is to determine the
8 amount or percentage of the benefit to be paid to an alternate
9 payee, IF ANY AMOUNT IS TO BE PAID TO AN ALTERNATE PAYEE.

10 (iv) The domestic relations order states that it applies to
11 the retirement system and that the retirement system shall make
12 payments to the alternate payee, IF ANY, as required under the
13 eligible domestic relations order and this act.

14 (v) The domestic relations order does not require the
15 retirement system to provide a type or form of benefit not pro-
16 vided by the retirement system or a form of payment not provided
17 by this act.

18 (vi) The domestic relations order does not require the
19 retirement system to provide an increased benefit determined on
20 the basis of actuarial value.

21 (vii) The domestic relations order does not require the pay-
22 ment of a benefit to an alternate payee that is required to be
23 paid to another alternate payee under a previously filed eligible
24 domestic relations order.

25 (viii) ~~The domestic relations order is filed before the~~
26 ~~participant's retirement allowance effective date.~~ THE DOMESTIC
27 RELATIONS ORDER STATES THE MANNER IN WHICH THE PARTICIPANT OR

1 ALTERNATE PAYEE, OR BOTH, SHALL PAY THE RETIREMENT SYSTEM FOR ALL
2 COSTS ASSOCIATED WITH ANY ACTUARIAL EVALUATION NEEDED TO IMPL-
3 MENT THE EDRO UNDER THIS ACT.

4 (ix) THE DOMESTIC RELATIONS ORDER STATES THAT AN ELECTION TO
5 RECEIVE A REDUCED RETIREMENT ALLOWANCE BY THE PARTICIPANT IS CON-
6 SIDERED VOID AS PROVIDED IN SECTION 5A(2), IF NECESSARY.

7 (G) "NORMAL RETIREMENT AGE" MEANS THE AGE AT WHICH THE PAR-
8 TICIPANT IS ELIGIBLE UNDER THE RETIREMENT SYSTEM TO RETIRE WITH
9 FULL UNREDUCED BENEFITS. NORMAL RETIREMENT AGE DOES NOT INCLUDE
10 THE AGE AT WHICH THE PARTICIPANT IS ELIGIBLE TO RETIRE WITH FULL
11 UNREDUCED BENEFITS UNDER AN EARLY-OUT PROVISION THAT IS OFFERED
12 BY THE RETIREMENT SYSTEM DURING A LIMITED TIME PERIOD TO CERTAIN
13 MEMBERS OF THE RETIREMENT SYSTEM.

14 (H) ~~(f)~~ "Participant" means a member, deferred member,
15 vested former member, deceased former member, or retirant under
16 the retirement system.

17 (I) ~~(g)~~ "Postretirement subsidy" includes, but is not
18 limited to, all of the following:

19 (i) A supplemental annuity.

20 (ii) A supplemental payment to a participant.

21 (iii) A percentage increase to a benefit payable to a
22 participant.

23 (iv) Any other payment to a participant or increase to a
24 benefit payable to a participant, excluding health benefits.

25 (J) ~~(h)~~ "Retirement system" means a public employee
26 retirement system created and established by this state or any
27 political subdivision of this state.

1 Sec. 3. Subject to the requirements of this act, an
2 alternate payee is entitled to an actual interest in a share of a
3 benefit that is or will become payable to a participant, if so
4 provided in an EDRO filed with the retirement system. The
5 retirement system shall administer the payment of a benefit pur-
6 suant to the EDRO and this section. THE RETIREMENT SYSTEM SHALL
7 NOT PAY FOR ANY COSTS ASSOCIATED WITH ANY ACTUARIAL EVALUATION
8 NEEDED TO IMPLEMENT AN EDRO UNDER THIS ACT.

9 Sec. 4. Except as otherwise provided in this act, the pay-
10 ment of a benefit to an alternate payee under an EDRO and this
11 act shall begin on the retirement allowance effective date of the
12 participant. The payment of a benefit under an EDRO and this act
13 shall be paid in 1 of the following forms, as applicable:

14 (a) A single life annuity that is equal to the actuarial
15 equivalent of the alternate payee's share of the benefit payable
16 throughout the life of the alternate payee. If the participant
17 is entitled to the payment of a benefit that is not reduced due
18 to early retirement under the retirement system, the alternate
19 payee's single life annuity shall be calculated using the
20 participant's unreduced benefit. If the participant is only
21 entitled to the payment of a benefit that is reduced due to early
22 retirement under the retirement system, the alternate payee's
23 single life annuity shall be calculated using the participant's
24 reduced benefit.

25 (b) If a retirement system offers a participant an optional
26 form of payment of a benefit at retirement, a reduced benefit
27 that is equal to the actuarial equivalent of the total benefit

1 being divided under the EDRO payable throughout the lives of the
2 participant and the alternate payee. The reduced benefit shall
3 be payable in the manner provided under the optional form of pay-
4 ment under the retirement system. The EDRO shall specify the
5 percentage or amount of the reduced benefit that is payable under
6 this subdivision to the participant and to the alternate payee
7 while both are alive. If the participant predeceases the alter-
8 nate payee while a reduced benefit is being paid to the partici-
9 pant and the alternate payee under this subdivision, the survivor
10 portion of the reduced benefit shall be payable to the alternate
11 payee. If the alternate payee predeceases the participant while
12 a reduced benefit is being paid to the participant and the alter-
13 nate payee under this subdivision, the alternate payee's percen-
14 tage or amount of the reduced benefit shall revert to and become
15 payable to the participant.

16 (c) A single life annuity that is equal to the alternate
17 payee's share of the benefit payable throughout the life of the
18 participant.

19 (D) A LUMP SUM PAYMENT FROM A DEFINED CONTRIBUTION PLAN.

20 Sec. 5. (1) An EDRO may provide for the payment of a bene-
21 fit to an alternate payee beginning on or after the participant's
22 earliest retirement date but before the participant terminates
23 employment as provided in this section. An alternate payee shall
24 begin to receive the payment of a benefit under this section
25 effective the first day of the month immediately following the
26 month in which the alternate payee notifies the retirement system

1 of his or her election to begin to receive payment of his or her
2 interest in the benefit of a participant.

3 (2) If an alternate payee elects to receive his or her
4 interest in the benefit of a participant after the participant's
5 earliest retirement date but before the participant's termination
6 of employment, the alternate payee is only entitled to the actu-
7 arial equivalent of the alternate payee's share of the
8 participant's benefit that would be payable when the participant
9 reaches ~~age 60~~ HIS OR HER NORMAL RETIREMENT AGE. If the par-
10 ticipant retires before ~~age 60~~ HIS OR HER NORMAL RETIREMENT
11 AGE, the retirement system shall recalculate the benefit payable
12 to the alternate payee so that the recalculated benefit payable
13 to the alternate payee plus the benefit previously paid to the
14 alternate payee are the actuarial equivalent of the alternate
15 payee's share of the benefit payable to the participant. If the
16 recalculated benefit is more than the benefit the alternate payee
17 is receiving, the retirement system shall begin paying the recal-
18 culated benefit to the alternate payee effective the first day of
19 the month immediately following the month in which the partici-
20 pant retires.

21 SEC. 5A. (1) AN EDRO ISSUED AFTER THE PARTICIPANT'S RETIRE-
22 MENT ALLOWANCE EFFECTIVE DATE MAY PROVIDE FOR THE PAYMENT OF A
23 BENEFIT TO AN ALTERNATE PAYEE AS PROVIDED IN THIS ACT.

24 (2) IF A PARTICIPANT WHO IS A RETIRANT FROM THE RETIREMENT
25 SYSTEM AND WHO IS RECEIVING A REDUCED RETIREMENT ALLOWANCE UNDER
26 AN OPTION UNDER THAT RETIREMENT SYSTEM IS DIVORCED FROM THE
27 SPOUSE WHO HAD BEEN DESIGNATED AS THE RETIRANT'S RETIREMENT

1 ALLOWANCE BENEFICIARY UNDER THAT OPTION, AN EDRO MAY PROVIDE THAT
2 THE ELECTION OF THE OPTION SHALL BE CONSIDERED VOID BY THE
3 RETIREMENT SYSTEM. THE EDRO SHALL STATE THAT THE ELECTION OF THE
4 OPTION TO RECEIVE A REDUCED RETIREMENT ALLOWANCE IS TO BE CONSID-
5 ERED VOID BY THE RETIREMENT SYSTEM. THE EDRO SHALL BE DATED
6 AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
7 SECTION OR AFTER THE RETIRANT'S RETIREMENT ALLOWANCE EFFECTIVE
8 DATE, WHICHEVER IS LATER. THE PARTICIPANT SHALL PROVIDE A CERTI-
9 FIED COPY OF THE DOMESTIC RELATIONS ORDER TO THE RETIREMENT
10 SYSTEM. IF AN ELECTION TO RECEIVE A REDUCED RETIREMENT ALLOWANCE
11 IS CONSIDERED VOID UNDER AN EDRO AND THIS SUBSECTION, THE
12 PARTICIPANT'S RETIREMENT ALLOWANCE SHALL REVERT TO A REGULAR
13 RETIREMENT ALLOWANCE, INCLUDING POSTRETIREMENT ADJUSTMENTS, IF
14 ANY. THE RETIREMENT ALLOWANCE SHALL REVERT TO A REGULAR RETIRE-
15 MENT ALLOWANCE UNDER THE EDRO AND THIS SUBSECTION EFFECTIVE THE
16 FIRST DAY OF THE MONTH FOLLOWING THE MONTH IN WHICH THE DOMESTIC
17 RELATIONS ORDER IS DETERMINED TO BE AN EDRO. THIS SUBSECTION
18 DOES NOT SUPERSEDE A DOMESTIC RELATIONS ORDER IN EFFECT ON THE
19 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION.

20 Sec. 10. (1) The retirement system shall, within a reason-
21 able period of time after receiving a domestic relations order,
22 determine if the domestic relations order is an EDRO under this
23 act. If the retirement system determines that the domestic rela-
24 tions order is an EDRO under this act, the retirement system
25 shall promptly notify the participant and alternate payee named
26 in the EDRO that the domestic relations order is an EDRO. ~~The~~
27 EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE retirement

1 system shall begin the payment of a benefit under this act
2 pursuant to the EDRO and this act on the first day of the month
3 following the month in which the domestic relations order was
4 determined to be an EDRO or the first day of the month following
5 the month in which a benefit is payable under the EDRO and this
6 act, whichever is later.

7 (2) If the retirement system determines that the domestic
8 relations order is not an EDRO under this act, the retirement
9 system shall promptly notify the participant and alternate payee
10 named in the domestic relations order that the domestic relations
11 order is not an EDRO. The retirement system shall specify in the
12 notice why the retirement system determined that the domestic
13 relations order is not an EDRO under this act. A determination
14 by the retirement system that a domestic relations order is not
15 an EDRO under this act does not prohibit a participant, alternate
16 payee, or court from filing an amended domestic relations order
17 with the retirement system under this act.

18 (3) IF THE PAYMENT OF A BENEFIT UNDER SUBSECTION (1) IS
19 DELAYED AFTER THE MONTH IN WHICH A BENEFIT IS PAYABLE UNDER THE
20 EDRO BECAUSE OF ADMINISTRATIVE DELAYS IN DETERMINING WHETHER THE
21 DOMESTIC RELATIONS ORDER IS AN EDRO, THE RETIREMENT SYSTEM MAY
22 PROVIDE FOR THE RETROACTIVE PAYMENT OF A BENEFIT TO THE FIRST DAY
23 OF THE MONTH FOLLOWING THE MONTH IN WHICH A BENEFIT IS PAYABLE
24 UNDER THE EDRO.

25 SEC. 10A. FOR THE PURPOSE OF ALL ACTUARIAL CALCULATIONS
26 REQUIRED BY THIS ACT, A RETIREMENT SYSTEM SHALL USE THE INTEREST
27 RATES AND UNDERLYING UNISEX MORTALITY TABLE SPECIFIED BY THE

1 PENSION BENEFIT GUARANTY CORPORATION FOR DETERMINING THE VALUE OF
2 PLAN BENEFITS UNDER TERMINATING SINGLE-EMPLOYER PENSION PLANS
3 UNDER 29 C.F.R. PART 2619. THE RETIREMENT SYSTEM SHALL USE THE
4 INTEREST RATE SPECIFIED BY THE PENSION BENEFIT GUARANTY CORPORA-
5 TION FOR THE SECOND MONTH PRECEDING THE DATE OF COMMENCEMENT OF
6 THE ALTERNATE PAYEE'S BENEFIT.